

IN THE MATTER OF

: BEFORE THE

CHICK-FIL-A

: HOWARD COUNTY

Petitioner

: BOARD OF APPEALS

: HEARING EXAMINER

: BA Case No. 08-004S

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DECISION AND ORDER

On May 16, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Chick-fil-A for a variance to erect a 4'8"(H) x 9'0" (W), 42 square foot, freestanding identification sign 180 feet from the Executive Park Drive right-of-way and 41 feet in height rather than the 42 foot setback required in relation to the total sign area and the 82 feet setback required in relation to the sign height, and to locate this same sign 200 feet from Route 100, in a B-1 (Business: Local) Zoning District, filed pursuant to Section 3.513, Title 3, of the Howard County Code (the "Sign Code").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Brandon Guest testified on behalf of the Petitioner. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following

facts:

1. The generally rectangular subject property is located on the southwest corner of the intersection of Executive Park Drive and Route 100. It is located in the 2nd Election District and referenced on Tax Map 30, Block 12, as Parcel 406 (the "Site"). The Site has a street address of 4905 Executive Park Drive.
2. The Property is about 2.87 acres in size and is the site of a Chick-fil-A restaurant.
3. Vicinal Properties. The properties to the north, west, and south are zoned POR (Planned Office Research). To the Site's north, across Executive Park Drive, is a Bob Evans' restaurant. To the west is a one-story brick building. Directly east is the elevated MD Route 100. The property to the south is the site of a future bank.
4. The Petitioner is requesting a variance to erect a 4'8"(H) x 9'0" (W), 42 square foot, freestanding identification sign 180 feet from the Executive Park Drive right-of-way and 41 feet in height rather than the 42 foot setback required in relation to the total sign area and the 82 feet setback required in relation to the sign height, and to locate this same sign 200 feet from Route 100.
5. Brandon Guest testified that the 42±-square foot sign, which will replace the existing 75 square-foot CHICK-fil-A sign in the same location, is required by the property owner. The proposed doubled-faced pylon red sign will incorporate the restaurant's icon into the restaurant's name.
6. The speed limit on MD 100 is 55 miles per hour, and 30 miles per hour on Executive Park Drive. It my experience that the average travel speed on MD 100 greatly exceeds 55 miles per hour.

7. The tall MD 100 retention wall fronts the east side of the site. Surrounding structures interfere with the visibility of the CHICK-fil-A.

CONCLUSIONS OF LAW

Section 3.513(b) of the Sign Code permits the Board of Appeals to grant variances from the provisions of the Sign Code where certain determinations are made. Based upon the foregoing Findings of Facts, I conclude as follows:

1. That there are unique physical conditions or exceptional topographical conditions peculiar to the property on which the proposed sign is to be located, including the location of existing buildings and other structures, irregularity, narrowness or shallowness of the lot, irregularity of the road right-of-way, location on a highway that has a dependency on nonlocal use, which conditions lead to practical difficulty and unnecessary hardship in complying strictly with the provisions of this subtitle.

The Site has frontage at along MD 100, which has a dependency on nonlocal use. Additionally, the average travel speed along MD 100 impedes motorists' ability to see a conforming sign in a safe manner. These conditions lead to practical difficulty and unnecessary hardship in complying strictly with the setback requirements of the Sign Code, in accordance with Section 3.513(b)(1)

2. Or, that there are obstructions, such as excessive grade, building interference, structures or landscaping on abutting property or properties which seriously interfere with the visibility of a proposed sign, resulting in practical difficulties and unnecessary hardship in complying strictly with the provisions of this subtitle.

Nearby structures and the severe grade difference between the Site and MD 100 seriously

interfere with the visibility of a conforming sign from these roads, causing practical difficulties and unnecessary hardship in complying with this subtitle. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(2).

3. Or, that there are historical, architectural, or aesthetic characteristics which shall be considered.

There are no historical, architectural, or aesthetic characteristics of the Property to be considered under section 3.513(b)(3).

4. That the variance, if granted, will not adversely affect the appropriate use or development of adjacent properties, nor result in a dangerous traffic condition.

The proposed sign will is smaller and will be constructed in the same location as the existing sign. There being no evidence of adverse affects from the existing sign on the use of adjacent properties, nor any evidence of a dangerous traffic condition resulting from the existing sign, I conclude the proposed sign is unlikely to produces adverse effects on the use or development of adjacent properties.

5. That the requested variance is the minimum necessary to afford relief, and can be granted without substantial impairment of the intent, purpose and integrity of this subtitle.

The proposed sign is a reasonable use and smaller than the existing sign. I therefore conclude the sign is the minimum necessary to afford relief and can be granted without substantial impairment of the intent, purpose and integrity of the Sign Code, in accordance with Section 3.513(b)(5).

6. That such practical difficulties or hardships have not been created by the applicant; provided, however, that where required findings pursuant to section 3.513 are made, the

purchase or lease of the property on which a proposed sign is to be located subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The practical difficulties are a result of unique Property conditions, vicinal obstructions, and highway conditions. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(6).

ORDER


Based upon the foregoing, it is this **1st day of June 2009**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Chick-fil-A to erect a 4'8"(H) x 9'0" (W), 42 square foot, freestanding identification sign 180 feet from the Executive Park Drive right-of-way and 41 feet in height rather than the 42 foot setback required in relation to the total sign area and the 82 feet setback required in relation to the sign height, and to locate this same sign 200 feet from Route 100, in a B-1 (Business: Local) Zoning District, is hereby **GRANTED;**

Provided, however, that:

1. The variance shall apply only to the uses and structures as described in the petition and plan submitted, and not to any other activities, uses, structures, or additions on the Property.
2. The sign shall not be erected, altered, or relocated without a sign permit issued by the Department of Inspections, Licenses, and Permits, in accordance with Section 3.509 of the Howard County Sign Code.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed: 6/2/09

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.